

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SONY ERICSSON MOBILE
COMMUNICATIONS AB,

Petitioner

v.

DELTA ELECTRONICS (THAILAND)
PUBLIC COMPANY LIMITED,

Respondent

No. C-09-1326 MMC

**ORDER DENYING RESPONDENT'S
REQUEST FOR CLARIFICATION OF
MAY 1, 2009 ORDER**

Before the Court is respondent Delta Electronics (Thailand) Public Company Limited's ("Delta") "Request for Clarification of Order," filed May 7, 2009. Petitioner Sony Ericsson Mobile Communications AB ("Sony Ericsson") has filed a response thereto. Having read and considered the parties' respective submissions, the Court rules as follows.

On May 1, 2009, the Court entered the following temporary restraining order: "Citibank N.A. and any third party upon whom Sony Ericsson has served Garnishment Interrogatories and upon whom this order is served, are hereby ENJOINED from responding to such Garnishment Interrogatories, until such time as the Court has ruled on the Motion for a Temporary Protective Order to be filed by Delta later today. In the event Delta does not file a Motion for a Temporary Protective Order later today, this temporary restraining order shall be dissolved without further order of the Court." (See Order, filed

1 May 1, 2009 at 1:28-2:5.)

2 Shortly thereafter, Delta filed its Motion for a Temporary Protective Order, by which
3 Delta seeks, inter alia, an order directing Citibank N.A. not to respond to a “Memorandum
4 of Garnishee” attached to an April 21, 2009 Writ of Attachment and served on Citibank N.A.
5 In particular, Delta argues, Delta is entitled to such protective order because Delta was not
6 served with said Memorandum of Garnishee and thus did not have the opportunity to
7 review it. (See Mot. for Temporary Protective Order, filed May 1, 2009, at 7:4-7.)¹

8 By the instant request, Delta seeks clarification as to whether the above-quoted
9 restraining order enjoins Citibank N.A. from responding to said Memorandum of Garnishee
10 pending resolution of its motion for a protective order; if the Court’s May 1, 2009 order does
11 not enjoin such response, Delta seeks an express order to that effect.

12 Where, as here, a court has issued a writ of attachment as to a third person, “the
13 levying officer shall request the third person to give the levying officer a garnishee’s
14 memorandum.” See Cal. Code Civ. Proc. § 488.610(a); see also Fed. R. Civ. P. 64
15 (providing “law of the state where the court is located” pertaining to writs of attachment is
16 applicable in district court proceeding). In the instant action, according to Sony Ericsson,
17 the U.S. Marshal, as levying officer, has served on Citibank N.A. a Memorandum of
18 Garnishee and has requested it be completed and returned to the U.S. Marshal. Delta
19 cites no authority providing that the plaintiff or levying officer must serve a copy of the
20 Memorandum of Garnishee on the defendant before the third person is required to respond
21 thereto, and the Court has located no such authority. Moreover, Sony Ericsson, in
22 response to the instant request, has provided a copy of the Memorandum of Garnishee the
23 U.S. Marshal served on Citibank N.A., and said Memorandum is in the form approved by
24 the Judicial Council of California.

25 Consequently, to the extent Delta’s pending Motion for a Temporary Protective
26 Order is based on an argument that the Memorandum of Garnishee attached to the Writ of


27
28 ¹The Motion for a Temporary Protective Order is currently pending before the
Honorable Bernard Zimmerman.

1 Attachment dated April 21, 2009 was improperly served on Citibank N.A., Delta has failed
2 to show it is likely to succeed on such motion. As a result, Delta has not shown it is entitled
3 to an order either clarifying or modifying the temporary restraining order filed May 1, 2009.
4 Cf. Winter v. Natural Res. Def. Council, Inc., 129 S. Ct. 365, 374 (2008) (finding party
5 seeking injunction “must establish,” inter alia, it is “likely to succeed on the merits” of its
6 claim).

7 Accordingly, Delta’s request is hereby DENIED.

8 **IT IS SO ORDERED.**

9
10 Dated: May 11, 2009


MAXINE M. CHESNEY
United States District Judge